

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

AMERICAN CLOTHING EXPRESS, INC.,
D/B/A ALLURE BRIDALS AND JUSTIN
ALEXANDER, INC.,

Plaintiffs,

v.

CLOUDFLARE, INC. and DOES 1 - 200,
inclusive,

Defendants.

Case No. 2:20-cv-02007-SHM-dkv

UNOPPOSED MOTION FOR SCHEDULING CONFERENCE

Plaintiffs, American Clothing Express, Inc. d/b/a Allure Bridals and Justin Alexander, Inc., pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, file this Unopposed Motion to set a scheduling conference. In support thereof, Plaintiffs state the following:

1. Plaintiffs filed a Complaint for Direct and Contributory Copyright Infringement against Defendants Cloudflare, Inc. (“Cloudflare”) and Does 1-200 on January 6, 2020. (ECF No. 1). Defendant Cloudflare filed an Answer and Counterclaims on March 20, 2020 against Plaintiffs. (ECF No. 21).

2. On April 10, 2020, the parties filed a Joint Motion for Extension of time to Answer Counterclaims, for Early Discovery, and for Case Management Relief. (ECF No. 23). On April 14, 2020, the Court enter an Order granting the parties’ Joint Motion, which among other things, stayed all case management activities until Plaintiffs answer the Counterclaims. (ECF No. 24).

3. On May 26, 2020, Plaintiffs filed a Motion to Dismiss Counterclaims filed by Cloudflare. (ECF. No. 29). On June 9, 2020, the Court notified all parties that a scheduling

conference would be set for June 23, 2020. (ECF. No. 30). On June 17, 2020, the Court cancelled the scheduled telephonic scheduling conference, seemingly in light of ECF No. 29. (ECF. No. 32). On February 24, 2021, the Court entered an Order Granting Plaintiffs' Motion to Dismiss Amended Counterclaims. (ECF No. 46). This Order was amended on November 4, 2021. (ECF No. 68). In light of the Court's dismissal of the Counterclaims, the Court's stay of case management activities should have been lifted.

4. Since that time, on December 17, 2021, Plaintiffs filed a Motion for Temporary Restraining Order against one of the website defendants, which remains pending. (*See* ECF No. 80).

5. Additionally, on January 26, 2022, the Clerk entered a default judgment order against 94 website defendants, leaving Cloudflare and four websites as the remaining defendants in the action. (ECF No. 87). Plaintiffs and Cloudflare are unable to engage in discovery with each other, however, as "[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)," and the Court has not set a Scheduling Conference or ordered the parties to confer pursuant to Rule 26(f).

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion, set a scheduling conference, and set a deadline for the parties to confer pursuant to Rule 26(f).

DATED: March 14, 2022

Respectfully submitted,

s/ Nicole D. Berkowitz

Grady M. Garrison (TN #8097)

Nicole D. Berkowitz (TN #35046)

**BAKER, DONELSON, BEARMAN, CALDWELL &
BERKOWITZ, P.C.**

165 Madison Avenue, Suite 2000

Memphis, TN 38103
Telephone: (901) 526-2000
Facsimile: (901) 577-2303
Email: ggarrison@bakerdonelson.com
Email: nberkowitz@bakerdonelson.com

Russell Bogart (NY #2856078) (Admitted Pro Hac Vice)
Stuart Kagen (NY #SK6496) (Admitted Pro Hac Vice)
KAGEN, CASPERSEN & BOGART, PLLC
757 Third Avenue, 20th Floor
New York, NY 10017
Telephone: (212) 880-2045
Facsimile: (646) 304-7879
Email: rbogart@kcbfirm.com
Email: skagen@kcbfirm.com

*Attorneys for Plaintiffs American Clothing Express, Inc. d/b/a
Allure Bridals and Justin Alexander, Inc.*

CERTIFICATE OF CONSULTATION

I hereby certify that counsel for Plaintiffs conferred with counsel for Defendant Cloudflare, Inc. via email on March 4-14, 2022 regarding the relief sought herein. Defendant Cloudflare, Inc. does not oppose this motion.

/s/ Nicole D. Berkowitz
Nicole D. Berkowitz

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2022, a true and correct copy of the foregoing was filed via the Court's CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record.

/s/ Nicole D. Berkowitz

Nicole D. Berkowitz